IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 650 of 1985

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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REVABEN HIMATLAL SHETH,SINCE [DECEASED] & 10 - Applicant(s)

Versus

MAHENDRAKUMAR MAGANLAL SOMEYA - Opponent(s)

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Appearance :

MR VG DAVE for MR YOGESH S LAKHANI for Petitioner No(s).: 1 - 1,2.
MR DM THAKKAR for MR PM THAKKAR for Respondent No(s).: 1.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 13/07/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 8th February, 1985 passed by the learned Assistant Judge, Rajkot in Civil Appeal No.171/1981, the respondents-heirs and legal representatives of the defendant no.1 in Rent

Civil Suit No.613/1979 have preferred the present Revision Application under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as **"the Rent Act"**).

The respondent no.1-plaintiff is the owner of the suit house situated at Rajkot. The suit house was leased to the defendant no.1, the ancestor of the petitioners nos.1/2 to 1/9 and the father-in-law of the petitioner no.2 for a monthly rent of Rs.16=00. The plaintiff instituted Rent Civil Suit No.613/1979 in the Court of Small Causes, Rajkot for recovery of possession of the suit house on the grounds, inter alia, that the defendant no.1 had not used the suit house for his residence for six months and more preceding the date of the suit; that the defendant no.1 had acquired suitable alternative accommodation at Mumbai and that the defendant no.1 had unlawfully sublet the suit house to the defendant no.2. The suit was contested by the defendants vide written statement Exh.12. The learned trial Judge, by judgment and order dated 21st July, 1981, dismissed the suit for recovery of possession. Feeling aggrieved, the plaintiff preferred Civil Appeal No.171/1981 in the Court of

learned District Judge, Rajkot. The learned Assistant Judge, by impugned judgment and order, allowed the Appeal and passed decree for possession in favour of the plaintiff. Therefore, the present Revision Application.

It should be noted that by documentary evidence produced by the plaintiff it was proved that the defendant no.1 and his family (his wife and the sons) were residing in Mumbai at least since the year 1975; that the daughters of the defendant no.1 all were married and were residing in Mumbai and Calcutta. The sons of the defendant no.1 were residing in Mumbai and Calcutta. The defendant no.1 had also acquired a residential flat at Kandivali in Mumbai. It has also been proved that since the defendant no.1 had shifted to Mumbai, the defendant no.2, his son-in-law, had shifted into the suit house and was residing there till the year 1979 when he acquired his own premises at Rajkot. In view of the evidence there can be no gain-saying that the defendant no.1 had ceased to use the suit house for the residence of himself and his family since the year 1975 and that he had acquired a suitable alternative accommodation at Mumbai. It has also proved that the defendant no.1 had unlawfully transferred

or assigned his interest in the suit house to the defendant no.2.

I am of the opinion that the lower appellate Court has rightly recorded finding against the defendants and has rightly passed decree for eviction against the defendants.

Moreover, pending the suit the defendant no.1 passed away. His wife, the petitioner no.1/1 also passed away pending this Revision Application. Admittedly, neither of their children was residing in the suit premises at Rajkot at the time of their death. Hence, neither of the petitioners can be said to be a tenant within the meaning of Section 5(11)(c)(i) of the Rent Act. Therefore also, the tenancy shall revert to the landlord.

No case for interference is made out. The Revision Application is dismissed with cost. Rule is discharged. Interim relief stands vacated.

(Ms. R.M.Doshit, J.)

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